

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

**Emilee Carpenter, LLC d/b/a
Emilee Carpenter Photography
and Emilee Carpenter,**

Plaintiffs,

v.

Letitia James, in her official
capacity as Attorney General of New
York; **Jonathan J. Smith**, in his
official capacity as Interim Commi-
ssioner of the New York State
Division of Human Rights; and
Weeden Wetmore, in his official
capacity as District Attorney of
Chemung County,

Defendants.

Case No. 6:21-CV-06303

**NOTICE OF MOTION OF
STATES OF NEBRASKA, ALA-
BAMA, ARKANSAS, KANSAS,
KENTUCKY, LOUISIANA, MISS-
ISSIPPI, MISSOURI, MONTANA,
OKLAHOMA, SOUTH CARO-
LINA, TEXAS, UTAH, AND WEST
VIRGINIA FOR LEAVE TO FILE
AMICI CURIAE BRIEF IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Please take notice that the States of Nebraska, Alabama, Arkansas, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Oklahoma, South Carolina, Texas, Utah, and West Virginia move this Court under Fed. R. Civ. P. 7(b) for leave to file an amici curiae brief in support of the Motion for Preliminary Injunction submitted by Plaintiffs Emilee Carpenter, LLC and Emilee Carpenter (collectively Carpenter). The grounds for this request are stated below, and the papers submitted with this request include the proposed amici brief that the States seek to file and a proposed order.

This Court should exercise its discretion to grant leave for amici States to file their proposed brief addressing the important issues raised in Carpenter's Motion for Preliminary Injunction. Although this Court does not have specific rules gover-

ning amicus briefs, federal district courts have “inherent authority” to grant participation by amicus curiae. *Mobile Cty. Water, Sewer & Fire Prot. Auth., Inc. v. Mobile Area Water & Sewer Sys., Inc.*, 567 F. Supp. 2d 1342, 1344 n.1 (S.D. Ala. 2008); *Jin v. Ministry of State Security*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008). No strict prerequisites must be established prior to qualifying for amicus status. *United States v. State of La.*, 751 F. Supp. 608, 620 (E.D. La. 1990). Rather, parties seeking to appear as amicus must simply show that their participation is useful or otherwise desirable. *Id.* (citing *Leigh v. Engle*, 535 F. Supp. 418, 420 (N.D. Ill. 1982)).

Under these standards, this Court should allow amici States to file their proposed brief in this case for two reasons.

First, amici States have an interest in ensuring that courts affirm the limited constitutional constraints placed on public-accommodation laws. Those laws are important tools to eliminate specific kinds of invidious discrimination. But the First Amendment’s Free Speech Clause forbids States from using public-accommodation laws to compel the expression of citizens who create custom speech for a living. Amici States do not want to violate the constitutional rights of individuals and their businesses, and thus they desire to see courts continue to recognize this narrow limitation on public-accommodation laws.

Second, the proposed brief will aid the Court in understanding the contours of compelled-speech protection in the public-accommodation context. That protection applies here because Carpenter’s custom wedding photographs are her speech and she objects to the messages that would be communicated through her photographs

of same-sex marriages. But the compelled-speech doctrine is irrelevant to other sales involving the “innumerable goods and services that no one could argue implicate” speech. *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm’n*, 138 S. Ct. 1719, 1728 (2018). Given this and other limitations on compelled-speech protection that are explained in the proposed brief, a ruling for Carpenter would be “sufficiently constrained” to ensure that States are still able to effectively enforce their public-accommodation laws. *Id.* Because the proposed brief discusses these important issues, it will help the Court in ruling on the pending Motion for Preliminary Injunction.

Date: June 4, 2021.

Respectfully submitted,

/s/Thomas Marcelle

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Certificate of Service

I certify that on June 4, 2021, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system and that all participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

/s/Thomas Marcelle
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